

REMARKS

In the Final Office Action, claims 1-3, 7 and 11 of this application are rejected under 35 U.S.C. § 102(e) as being anticipated by Ohzuku et al., US 2004/0126660 A1 ("Ohzuku"). Claims 5 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohzuku, as applied to claims 1-3, 7 and 11, in view of Uemura et al., US 2002/0012830 A1. Claims 8 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohzuku, as applied to claims 1-3, 7 and 11, in view of Okabe et al., JP 2003-031219.

The effective date of Ohzuka is July 30, 2003. The nonaqueous electrolyte secondary battery defined in claims 1-3, 7 and 11 was reduced to practice in Japan prior to July 30, 2003. To establish this fact, a "DECLARATION OF PRIOR INVENTION IN WTO MEMBER COUNTRY TO OVERCOME CITED PUBLICATION (37 C.F.R. § 1.131)" (with Exhibits A, B and C as identified in the declaration) is submitted herewith. (Four copies of the Rule 131 declaration signed by different inventors are being submitted).

The declaration establishes invention of the subject matter of the rejected claims prior to the effective date of Ohzuka within the meaning of 37 C.F.R. § 1.131. Withdrawal of the 35 U.S.C. § 102 rejection and the 35 U.S.C. § 103(a) rejections is in order and

is respectfully requested.


The foregoing is believed to be a complete and proper response to the Office Action dated May 5, 2010, and is believed to place this application in condition for allowance.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

KUBOVCIK & KUBOVCIK



Ronald J. Kubovcik
Reg. No. 25,401

Crystal Gateway 3
Suite 1105
1215 South Clark Street
Arlington, VA 22202
Tel: (703) 412-9494
Fax: (703) 412-9345
RJK/ff